

EXHIBIT G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 11-MJ-6030-ROSENBAUM

THE UNITED STATES OF AMERICA,

Plaintiff,

vs. FORT LAUDERDALE, FLORIDA
MARCH 2, 2011

CHRISTOS BAGIOS,

Defendant.

TRANSCRIPT OF PRETRIAL DETENTION HEARING AND
PRELIMINARY EXAMINATION
BEFORE THE HONORABLE ROBIN S. ROSENBAUM,
UNITED STATES MAGISTRATE JUDGE

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(Call to order of the court)

THE CLERK: All rise.

THE COURT: Please be seated. All right. Just one moment, please.

THE CLERK: Okay.

THE COURT: Thank you. All right. Good morning. This is case number 11-6030, United States versus Christos Bagios.

Would counsel, please, state their appearances for the record.

MR. DALY: Your Honor, for the United States, Mark Daly and Michelle Petersen, trial attorneys with the Tax Division of the U.S. Department of Justice.

THE COURT: Good morning.

MR. DALY: Good morning, Your Honor

MS. PETERSEN: Good morning, Your Honor.

MR. MENCHEL: Your Honor, on behalf of Christos Bagios, Matthew Menchel of Kobre & Kim.

MR. GREENSPAN: And Arthur Greenspan of Richards Kibbe & Orb.

THE COURT: Thank you. All right. This matter is set for a pretrial detention hearing and a preliminary examination.

Is the government ready to proceed?

MR. DALY: We are, Your Honor. We did just want to clarify one thing before we proceeded with this aspect.

1 There was some confusion, at least on the government's
2 side yesterday as to timing regarding when an indictment needs
3 to be returned, because it seemed that as to when the clock
4 ends.

5 Specifically, we are talking about the 10 additional
6 days that the government would get to bring an indictment.

7 Is it 40 days in total or is it 10 days from
8 yesterday's hearing? Because if we look at it --

9 THE COURT: It is not 10 days from yesterday's
10 hearing.

11 MR. DALY: Fair enough. That answers my question.

12 THE COURT: All right.

13 MR. DALY: And we are ready to proceed, Your Honor. A
14 question about procedure.

15 We have Special Agent Ficco here. The government will
16 proffer facts that he will adopt, as well as his prior
17 affidavit.

18 Should we at this time proffer facts for both the
19 preliminary hearing and the detention hearing so as not to
20 duplicate?

21 THE COURT: Yes.

22 MR. DALY: Okay. Perfect.

23 We also have, Your Honor, one exhibit which I think
24 will at least save a little time, and I have provided a copy to
25 counsel, which is the statement of facts from the UBS deferred

1 prosecution agreement.

2 THE COURT: All right.

3 MR. DALY: This document sets out basically the scheme
4 that the government alleges Mr. Bagios was involved in.

5 Rather than repeating it here, I will summarize it,
6 but it does give the details and it would shorten this hearing
7 a little bit.

8 THE COURT: All right. But, of course, the defense is
9 free to cross-examine on any of the facts that you might offer,
10 including the ones in the statement of facts from the UBS
11 deferred prosecution agreement.

12 MR. DALY: Understood, Your Honor. May I approach?

13 THE COURT: You may.

14 Government's Exhibit 1 marked for identification

15 THE COURT: Thank you. Let me ask you something:

16 Does this statement of facts mention Mr. Bagios either
17 by name or by reference anywhere? And, if so, would you point
18 out where, please.

19 MR. DALY: Your Honor, it does not name any
20 individual. However, it does, I believe, talk about UBS
21 sending 45 to 60 bankers.

22 It is on page 3, Paragraph Number 6 where it talks
23 about, it is the 1, 2, 3, 4, 5, 6, 7, it is the 5th line, the
24 sentence that begins almost all the way to right side.

25 "This U.S. cross border business with service

1 primarily from service desks located in Zurich, Geneva and
2 Lugano which employed about 45 to 60 Swiss bank based bankers
3 or client advisors who specialized."

4 That paragraph then goes on to talk about some of the
5 activities that those bankers engaged in.

6 Mr. Bagios would be incorporated within that group.

7 THE COURT: All right. Thank you.

8 MR. DALY: Just to briefly summarize the UBS scheme,
9 Your Honor, and Special Agent Ficco will adopt these, it ran
10 from at least 2000 to 2007.

11 As we just discussed, it involved Swiss based bankers
12 traveling to the United States to conduct unlicensed and
13 unregistered banking, in violation of both U.S. securities law,
14 tax law and a qualified intermediary agreement, which is a
15 contract entered into between UBS, A.G. and the IRS.

16 Specifically, that QI agreement called for UBS to give
17 its U.S. clients two options. They could either give the bank
18 a W-9 and to have themselves declared to the IRS, or they could
19 sell all U.S. securities and not have their identities declared
20 to the United States.

21 UBS and its bankers developed a scheme whereby they
22 created sham entities in offshore tax haven jurisdictions where
23 they would claim that those sham entities were the true owners
24 of the accounts rather than the U.S. persons.

25 In so doing, the bankers and the bank could keep false

1 forms W-8BEN which is essentially an identification form saying
2 that the individual who owns the account is not a U.S. tax
3 payer.

4 They should have been filing a W-9 which the bank
5 would have kept which would have identified the individual,
6 their social security and their residence in the United States.

7 The UBS bankers accepted these and kept them in their
8 files, and that was the heart of the scheme at that point.

9 It was used to conceal their assets. It was done year
10 after year. The bankers would then enter the United States,
11 often under guise of being here for personal vacation or
12 travel, meet with their U.S. clients, conduct banking, show
13 statements, and they would also have the individuals come to
14 Switzerland to meet with them there where they would conduct
15 transactions.

16 As is referenced in the complaint, Mr. Bagios serviced
17 at least one client who has been indicted, a Bernard Goldstein
18 who is indicted in the Southern District of California.

19 He is a fugitive. Right after the deferred
20 prosecution agreement was entered into, he fled the United
21 States and to date has not returned.

22 Mr. Bagios, conducted banking for Mr. Goldstein. He
23 did wire transfers. His signature is authorized --

24 THE COURT: I need you to slow down just a little bit.
25 Okay?

1 MR. DALY: Certainly, Your Honor.

2 THE COURT: All right.

3 MR. DALY: His signature, noting that documents were
4 received are on foreign corporation documents that were in UBS'
5 files for those sham entities.

6 THE COURT: Meaning Mr. Bagios' signature.

7 MR. DALY: Mr. Bagios' signature is on them, and his
8 UBS stamp is on them as well that identifies who he is and what
9 his responsibilities are.

10 MR. MENCHEL: I am sorry, Your Honor. I missed that
11 last portion because it was a little fast. Can you repeat
12 that?

13 MR. DALY: Certainly. In the files there are the
14 corporation documents for the sham entities that are signed and
15 registered in, I believe in Mr. Goldstein's case, it is Panama.

16 UBS would keep those to document, to perpetuate the
17 fraud that the foreign entity was the true owner of the
18 account.

19 Mr. Bagios' signature is on these indicating that they
20 were received by UBS, and his stamp stating his name, his
21 position and where he sat is on some of them as well.

22 Mr. Bagios received faxes from Mr. Goldstein directing
23 him to transfer money back to the United States.

24 Further there is a notation in UBS' records --

25 THE COURT: I am sorry. I just need you to slow down

1 a little bit. All right. Thank you.

2 MR. DALY: There are --

3 THE COURT: Mr. Bagios received?

4 MR. DALY: Mr. Bagios also received faxes --

5 THE COURT: Right.

6 MR. DALY: -- from Mr. Goldstein directing him to
7 transfer funds from his undeclared account in Switzerland back
8 to the United States for him, repatriating the funds.

9 There are notes in UBS' records that Mr. Goldstein was
10 approached to sign a W-9 then and refused and was not forced to
11 sell his U.S. securities.

12 The IRS has received information from many other
13 taxpayers who had undeclared accounts who Mr. Bagios was their
14 personal banker for as well as Mr. Goldstein.

15 Six other of those clients reported that they, too,
16 used sham entities in order to defraud the United States. All
17 of these individuals have entered the voluntary disclosure
18 program.

19 THE COURT: Let me ask you a question.

20 MR. DALY: Yes, Your Honor.

21 THE COURT: The 6 individuals who said they also used
22 sham entities, did they also identify the defendant as having
23 been involved in some way?

24 MR. DALY: They identified him as their banker.

25 THE COURT: All right.

1 MR. DALY: Those people identified that they had
2 meetings with Mr. Bagios in the United States and Switzerland
3 as well.

4 THE COURT: All right.

5 MR. DALY: To go along with that, Renzo Gadola who has
6 pled guilty and is awaiting sentencing here in the district
7 provided additional information about basically the agreement
8 that --

9 THE COURT: I am sorry. One more time. Lorenzo
10 Gadola --

11 MR. DALY: Who has pled guilty.

12 THE COURT: Right. But is he one of Mr. Bagios'
13 clients? All right.

14 MR. DALY: He is referenced in the complaint --

15 THE COURT: Right.

16 MR. DALY: -- as a former colleague. He has provided
17 additional information about how banking was coordinated from
18 UBS showing that they worked together in a similar fashion;
19 namely that he was part of a team involving at least three
20 other bankers, one of whom was a supervisor; that they met
21 quarterly to discuss their assets under management and their
22 banking activities.

23 THE COURT: I am sorry. Mr. Gadola was a part of a
24 team involving Mr. Bagios?

25 MR. DALY: And at least two other bankers --

1 THE COURT: All right.

2 MR. DALY: -- that serviced the West Coast U.S.
3 clients in the West Coast with undeclared accounts.

4 They met quarterly to go over their banking
5 activities. When Mr. Bagios and Mr. Gadola left UBS, they
6 handed off their clients to these other bankers on the team who
7 then continued the scheme and perpetuated the fraud, and in
8 some instances Mr. Gadola and his successor met with the
9 clients in the United States and introduced themselves as this
10 individual would be your next client. The same thing happened
11 with Mr. Bagios.

12 Mr. Bagios was interviewed shortly after he was
13 arrested in New York City where he stated that he understood
14 that there were clients with declared accounts.

15 Just to step back, Your Honor, the clients, the IRS
16 has received information from 17 clients who identified
17 Mr. Bagios as their banker at UBS.

18 MR. MENCHEL: Can I just interrupt and ask, Your
19 Honor, just so I understand, earlier Mr. Daly referenced many
20 other tax payers using Mr. Bagios. Are those the same 17?

21 MR. DALY: Yes.

22 MR. MENCHEL: Okay.

23 MR. DALY: And within that 17 is the subset of 6 that
24 used sham entities.

25 THE COURT: All right.

1 MR. DALY: Those taxpayers have estimated their assets
2 under management, and that is between 38 and \$90,000,000.

3 Now, Mr. Gadola, as stated in the complaint, who had a
4 much better understanding of his practice, gave a much higher
5 figure for the total client base.

6 MR. MENCHEL: How much was that, if I may ask?

7 MR. DALY: It is, if you go to --

8 MR. MENCHEL: Is it in the complaint?

9 MR. DALY: It is in the complaint. If you go to --

10 MR. MENCHEL: Then that's all right.

11 MR. DALY: It is in Paragraph 15. He stated that
12 Mr. Bagios had approximately 100 to 150 undeclared U.S. clients
13 with 400 to \$500,000,000 in undeclared assets under management.

14 The government would also proffer that the total tax
15 loss for the scheme, which UBS has admitted to, was over
16 \$400,000,000 which they paid over to the United States.

17 Moving on to Mr. Bagios personally, the facts are that
18 he and his attorneys have repeatedly stated to us that he has
19 no ties to the United States. No friends. No family. No
20 business connection.

21 Further, he has no assets here in the United States.
22 His pretrial report identifies two luxury automobiles that he
23 keeps in Switzerland, a Porsche and a Jaguar as well as a boat.

24 He owns a condominium there. His nuclear family lives
25 in Switzerland. His extended family is in Greece.

1 He has substantial assets outside of the United
2 States. Further, the pretrial report shows that he has
3 conducted extensive travel throughout the world.

4 We would also proffer that Credit Suisse maintains a
5 banking a private banking office in Nassau which is only 80
6 miles from Fort Lauderdale.

7 MR. MENCHEL: I am sorry. If I can just interrupt.
8 Where are you getting the basis for the Jaguar?

9 MR. DALY: I believe it is -- the Pretrial Services
10 report is a little unclear. If you look at the statement of
11 assets --

12 MR. MENCHEL: Is actually an Audi. I think that
13 should be corrected.

14 MR. DALY: It is German.

15 Further, when Mr. Bagios was arrested, the contents
16 that he had on him were inventoried. Among those were various
17 bank statements for his current clients at his current
18 position.

19 The IRS has gone back and run the names on those
20 statements, and on one account with \$14,000,000, the individual
21 identified in the statement is a U.S. taxpayer and has not
22 filed an FFAR declaring the account.

23 We would also proffer that Mr. Bagios is a Greek
24 citizen with a Greek passport, and that according to the Office
25 of International Affairs, Greece will not extradite its

1 nationals.

2 He has been a Swiss resident since 1993, and
3 Switzerland will not extradite for tax crimes.

4 I think at that time, Your Honor, those are all of the
5 additional facts that we would proffer.

6 THE COURT: All right. Mr. Menchel and Mr. Greenspan,
7 do you wish to cross-examine the agent?

8 MR. MENCHEL: Yes, Your Honor.

9 THE COURT: All right.

10 MR. DALY: Special Agent Ficco.

11 THE CLERK: Please raise your right hand.

12 SPECIAL AGENT GUY FICCO WAS DULY SWORN BY THE CLERK OF COURT

13 THE COURT: All right. Please state your name and
14 spell your last name for the record.

15 THE WITNESS: Guy Ficco. F-i-c-c-o.

16 THE COURT: All right. Agent Ficco, did you hear
17 everything that Mr. Daly just said in his proffer?

18 THE WITNESS: I did.

19 THE COURT: And I also note that you are the affiant
20 on the affidavit.

21 Do you have any modifications to anything that was
22 said or corrections to anything that was said by Mr. Daly or
23 that is in the affidavit?

24 THE WITNESS: I do not.

25 THE COURT: Do you have any corrections to anything in

1 the statement of facts that Mr. Daly has provided the court
2 with?

3 THE WITNESS: I do not.

4 THE COURT: Do you adopt all of these things as your
5 testimony here today?

6 THE WITNESS: Yes.

7 THE COURT: All right. You may go ahead and
8 cross-examine the agent.

9 MR. MENCHEL: Thank you, Your Honor. Is it all right
10 if I do it from counsel table?

11 THE COURT: Of course.

12 CROSS EXAMINATION

13 BY MR. MENCHEL:

14 Q. Agent Ficco, good morning.

15 A. Good morning.

16 Q. There was reference made to this statement of facts which,
17 as I understand it, was part of the UBS deferred prosecution
18 agreement; is that correct?

19 A. Yes.

20 Q. All right. And as part of the UBS deferred prosecution
21 agreement, was UBS required to identify all of its own
22 individuals that it believed were part and parcel of this
23 conspiracy?

24 A. I do not believe so.

25 Q. They were not?

1 A. I do not believe so.

2 Q. So then I take it that nobody from UBS has affirmatively
3 identified Mr. Bagios as a member of this conspiracy as part of
4 the deferred prosecution agreement entered into with the United
5 States?

6 A. Not as part of the deferred prosecution agreement, correct.

7 Q. And you heard I believe Mr. Daly proffer that the only
8 reference by I guess implication to Mr. Bagios in this
9 statement of facts would be on Paragraph 6 with respect to the
10 sentence, "This U.S. cross border business was serviced
11 primarily from service desks located in Zurich, Geneva and
12 Lagano which employed by 45 to 60 Swiss based private bankers
13 or client advisors who specialized in servicing U.S. clients,
14 correct?

15 A. What was the question?

16 Q. Is it correct that the only reference to Mr. Bagios in this
17 entire statement of facts would be that one sentence?

18 A. I believe that's correct.

19 Q. Now, do you have a copy of the complaint in front of you?

20 A. I do not.

21 Q. I think it might be helpful if you did because what I want
22 to do is just sort of walk through the paragraphs.

23 MR. DALY: May I approach, Your Honor?

24 THE COURT: You may.

25 THE WITNESS: Thank you. I have it.

1 MR. MENCHEL: Okay.

2 BY MR. MENCHEL:

3 Q. And have you familiarized yourself with it since swearing
4 to it in front of have Judge Rosenbaum?

5 A. I have.

6 Q. I want to direct your attention starting on Paragraph 12.
7 Let me know when you are there.

8 A. I am there.

9 Q. Do you see it says, "According to a statement of facts
10 agreed to by UBS, private bankers in UBS' United States cross
11 border business typically travel to the United States within
12 encrypted laptop computers?"

13 A. Yes.

14 Q. Okay. First of all, any evidence that Mr. Bagios was one
15 of those individuals who traveled to the U.S. with an encrypted
16 laptop?

17 A. I am not sure if Mr. Gadola, the other UBS banker, stated
18 how they traveled. So I am not sure whether or not there is
19 reference to Mr. Bagios there.

20 Q. So your answer today is you don't know?

21 A. I am not sure.

22 Q. Okay. And there is nothing inherently illegal about a
23 banker wanting to protect bank secrecy rules and regulations of
24 a bank traveling with an encrypted laptop, is there?

25 A. I don't believe so.

1 Q. Now, I believe just a moment ago Mr. Daly proffered that
2 Switzerland will not extradite for tax crimes. Do you recall
3 him saying that?

4 A. Yes.

5 Q. Is that something that you also know of your own knowledge?

6 A. Yes.

7 Q. What is that based on, your own knowledge?

8 A. Well, I have, in addition to this assignment, I am actually
9 one of the international -- I am in international operations
10 for IRS C.I. and I have seen other instances, for example, Mark
11 Rich who is a tax fugitive who Switzerland would not extradite.

12 Q. When was that?

13 A. For Mark Rich?

14 Q. Yes. It was years ago, wasn't it?

15 A. Years ago.

16 Q. It was under the Clinton Administration, I believe, right?

17 A. Yes.

18 Q. Okay. And do you know whether or not Swiss extradition
19 laws have changed since the Mark Rich case? Have you kept
20 abreast of that?

21 A. I am not aware that they have changed.

22 Q. You are not aware of the fact that under Swiss law it is
23 actually within the discretion of the Swiss Government as to
24 whether or not they are going to extradite?

25 A. I am not.

1 Q. Okay. Do you know whether or not the Swiss Government
2 makes a distinction between extraditing one of its own citizens
3 as opposed to a resident simply living there but with another
4 citizenship?

5 A. I do not.

6 Q. You don't know?

7 A. I don't know.

8 Q. Okay. Am I right that Mr. Gadola has told the government
9 that Mr. Bagios knew that some of his clientele had undeclared
10 accounts?

11 A. That's correct.

12 Q. Did Mr. Gadola happen to tell you how it was he knew that
13 Mr. Bagios knew that his clients didn't have or had undisclosed
14 or undeclared accounts?

15 A. As Mr. Daly said, they would, being part of the same team,
16 they would meet quarterly and discuss each other's clients
17 base, and it was openly discussed that these accounts were
18 undeclared.

19 Q. Openly discussed?

20 A. Amongst the group.

21 Q. Amongst the members?

22 A. Yes.

23 Q. Okay. And Mr. Gadola specifically identified Mr. Bagios as
24 being one in that group that was openly discussing whether or
25 not these accounts were undeclared or not?

1 A. I don't know that he specifically said Mr. Bagios said the
2 accounts were undeclared, but it was discussed amongst this
3 group of 4 or 5 gentlemen that the accounts were undeclared,
4 and my distinction is I don't know if Bagios actually said or
5 the words came out of his mouth, but it was openly discussed in
6 the meetings.

7 Q. Meetings that Mr. Bagios would have attended?

8 A. Yes.

9 Q. Thank you. I believe the complaint also makes reference to
10 the fact that according to Mr. Gadola, Mr. Bagios actively
11 assisted clients in evading U.S. income taxes. Am I fairly
12 stating that?

13 A. Please refer me to a paragraph.

14 Q. It may be in 15 or 16. Let me just take a look. Maybe
15 later on. I will see if I can find it.

16 That doesn't ring a bell with you, what I just said?

17 A. Can you repeat the question?

18 Q. That's all right. No. We will move on and I will circle
19 back to it. I will find it in my notes.

20 A. Okay.

21 Q. Going to Paragraph 19, which is under the manner and means
22 used to carry out the conspiracy, do you see that page? It is
23 page 7.

24 A. Yes. I am there.

25 Q. Okay. In Paragraph 19 it says, "It was part and an object

1 of the conspiracy that Christos Bagios and others would and did
2 market undeclared Swiss bank accounts and Swiss bank secrecy to
3 wealthy United States clients who were interested in attempting
4 to evade United States income taxes." Do you see that?

5 A. I do.

6 Q. What does that actually mean? How was it that Mr. Bagios
7 and others marketed this service?

8 A. As part of their position at UBS, Mr. Gadola and Mr. Bagios
9 and other bankers would service these undeclared accounts, and
10 there was conversations where they would actually set up or
11 facilitate or help the set up of nominee entities to hold these
12 accounts, and this was discussed by the bankers with the U.S.
13 taxpayers.

14 Q. Okay. And again with respect to Mr. Bagios in particular,
15 because that's who we are here for --

16 A. Yes.

17 Q. -- do you have any evidence, either from Mr. Gadola, or
18 otherwise, that Mr. Bagios himself had full knowledge and
19 understanding that he was helping to assist and evade U.S.
20 taxpayers?

21 A. With respect to Bernard Goldstein, Mr. Bagios was
22 Mr. Goldstein's banker while Mr. Goldstein's' UBS account was
23 in his name personally, and then he continued to be his banker
24 once the account was transferred to a nominee Panamanian
25 corporation.

1 I don't know what conversations Mr. Goldstein had with
2 Mr. Bagios specifically, but the inference is there that he was
3 aware that a W-9 was not filed for Mr. Goldstein's' Panamanian
4 corporation.

5 Q. And he was aware of that because I think Mr. Daly said
6 there was some reference to it in the file?

7 A. There are notes in the file of documents UBS had turned
8 over to the United States Government which reflect that.

9 Q. Whose notes are they?

10 A. The banker. The UBS banker.

11 Q. Would that be Mr. Bagios or somebody else?

12 A. It is unclear as to whether or not it was Mr. Bagios or it
13 was another UBS banker, but Mr. Bagios was the named
14 relationship manager.

15 Q. Okay. And there was reference I think by Mr. Daly that
16 Mr. Goldstein, am I getting the name right?

17 A. Yes.

18 Q. That he has fled the jurisdiction of the United States?

19 A. As far as I know, that is correct.

20 Q. Just so we are clear, there is no evidence linking his
21 fleeing of the country to Mr. Bagios in any way, correct?

22 A. I don't believe so.

23 THE WITNESS: May I trouble you for a glass of water?

24 THE COURT: Sure.

25 THE WITNESS: Thank you, Your Honor.

1 BY MR. MENCHEL:

2 Q. In Paragraph 20 it says, "According to the statement of
3 facts entered into by UBS and according to information provided
4 by Lorenzo Gadola, it was further a part of the conspiracy that
5 Christos Bagios and others would and did travel to the United
6 States to provide investment advice to United States clients
7 and to conduct banking with United States clients."

8 A. Yes.

9 Q. There is nothing inherently illegal about that, is there?

10 A. Just those two sentences?

11 Q. Yes.

12 A. Or just that sentence?

13 Q. Yes.

14 A. No.

15 Q. Okay. How about the sentence that follows:

16 "Christos Bagios and others would and did conduct
17 banking with United States clients with undeclared accounts
18 from Switzerland and elsewhere via mailings, e-mails and
19 telephone calls to and from the United States." Do you see
20 that?

21 A. I do.

22 Q. Okay. And so is the inference that we are supposed to draw
23 here that once again Mr. Bagios knew that the clients he was
24 dealing with had undeclared accounts?

25 A. Yes.

1 Q. Okay. And as I understand your testimony so far, the only
2 basis for that is Mr. Gadola's testimony is that they had these
3 quarterly meetings or so where they would openly discuss this;
4 is that right?

5 A. Well, there is the recordings in the Goldstein's file.
6 There is Mr. Gadola, and there are 17 voluntary disclosure
7 files that were filed by U.S. taxpayers which for undeclared
8 accounts which identify Mr. Bagios in meeting with Mr. Bagios
9 in the United States to discuss these accounts.

10 Q. Okay. And that's actually getting to my next question.

11 The 17 taxpayers who have come forward under the
12 voluntary disclosure program, have they specifically said, or I
13 assume they have been interviewed?

14 A. They have provided statements under penalties of perjury.

15 Q. Okay. And did anyone of those 17 taxpayers specifically
16 say that Mr. Bagios was aware at the time that the account
17 holders he was dealing with had undeclared accounts?

18 A. They did not use those words.

19 Q. Paragraph 22 discusses a UBS marketing event at Art Basil
20 in Miami, Florida. Do you see that?

21 A. I do.

22 Q. Okay. What is your basis for that paragraph?

23 A. The basis is that UBS solicited clients at this event and
24 had meetings with existing clients at this event in Miami.

25 Q. Okay. And was it openly discussed at this event in Miami

1 that UBS was marketing ways of evading U.S. tax?

2 A. I am not aware as to what was actually discussed in terms
3 of the marketing strategies at this event. I am aware that UBS
4 bankers typically would go to this event to solicit new
5 clients.

6 Q. I am sorry. I apparently cut you off.

7 A. I was just going to say solicit new clients and also
8 maintain existing client relationships.

9 Q. And there is nothing inherently illegal about that,
10 obviously?

11 A. Just in the fact of meeting with clients and soliciting new
12 clients, no, there is nothing inherently illegal.

13 Q. Well, is there anything else in that paragraph that I
14 should be discerning from it other than what it says?

15 A. Well, I am unsure as to the undeclared accounts if there
16 have been clients who have been interviewed that stated this
17 was openly discussed. I am not aware of that.

18 Q. Okay. By the way, just going back to Paragraph 20, I meant
19 to ask you if it references mailings, e-mails, telephone calls
20 to and from the United States? Have you seen those mailings
21 and e-mails?

22 A. Are you talking about the second sentence there?

23 Q. Yes.

24 A. I believe Mr. Gadola stated that.

25 Q. So is the answer to my question that you have not seen that

1 documentation?

2 A. I have not seen that documentation, correct.

3 Q. In your knowledge of this investigation, which I am
4 assuming is fairly far-reaching, is that fair to say?

5 A. Yes, I guess so.

6 Q. Okay. Have you seen any document that would in any way
7 indicate or prove that Mr. Bagios was aware in real time that
8 he was dealing with U.S. taxpayers that had undeclared
9 accounts?

10 A. Again, I refer back to Mr. Goldstein.

11 Q. The documents that show that there was an account, a
12 corporation opened; is that right?

13 A. The documents that previously showed Mr. Goldstein having
14 an account in his name in California and Mr. Bagios as his
15 relationship manager; the incorporation of the company in
16 Panama, the shifting of the opening up of an account at UBS
17 under that Panamanian corporation and Mr. Bagios assisting a
18 transfer for Mr. Goldstein's personal account to the Panamanian
19 corporation.

20 Q. Is that the only event you can think of?

21 A. Off the top of my head, that's the event are triggers it in
22 my mind, yes.

23 Q. Okay. Thank you. Okay. Moving on to Mr. Goldstein, do
24 you know when he began his relationship with UBS?

25 A. I have seen documents that say 1992.

1 Q. Okay. And do you know who is private banker was at that
2 time?

3 A. You know, I have seen the document. I cannot recall off
4 the top of my head.

5 Q. Not Mr. Bagios?

6 A. I do not believe it was Mr. Bagios in 1992.

7 Q. At any time was Mr. Bagios ever the private banker of
8 Mr. Goldstein?

9 A. I believe he was.

10 Q. You saw documents that indicated that?

11 A. I have seen his name on the files, and to me that indicated
12 he was the relationship manager.

13 As a matter of fact, I think I saw an account
14 statement where it actually identifies client advisor, Christos
15 Bagios.

16 Q. Okay. Now, I think there has been a proffer made, and it
17 is actually also as well, it is in the complaint in Paragraph
18 24 that this Kasler Management Corporation, I am assuming
19 that's the company we have just been talking about; is that
20 right?

21 A. Yes, it is.

22 Q. Okay. That it was a sham bearer corporation. Okay. What
23 evidence do you have that Mr. Bagios was aware at the time of
24 its creation that it was a sham bearer corporation?

25 A. Other than -- well, I think it is important to go back to

1 the time frame.

2 Q. Sure.

3 A. Mr. Daly talked about the IRS and the QI initiative; the QI
4 program coming into effect in the 2000 time frame.

5 Q. Right.

6 A. And that this corporation, it was incorporated October 23,
7 2000. The evidence is that this corporation did nothing except
8 hold an account at UBS.

9 Q. Okay. And it references in Paragraph 25, the complaint
10 references, it says, "Christos Bagios, Goldstein and their
11 co-conspirators established a bank account at UBS in
12 Switzerland in the name of Kasler."

13 Who would be the co-conspirators?

14 A. I believe it is the incorporation company in Panama and
15 other bankers at UBS who were involved in the account opening.

16 Q. And am I correct that you are seeing Mr. Bagios' name on
17 the account opening documents; is that right?

18 A. I don't know that his name is on the account opening
19 documents. His name is on the actual incorporation of the
20 Panamanian corporation.

21 He signs the bottom of it, and it appears to be that
22 he is accepting it on behalf of UBS.

23 Q. Okay.

24 A. Well, his name is clearly spelled out in his signature.

25 Q. The way this is written it says, "Christos Bagios,

1 Goldstein and their co-conspirators established a bank
2 account."

3 A. Right.

4 Q. And I guess my question then is what exactly did Mr. Bagios
5 do in the establishing of that account?

6 A. Well, he accepted the Panamanian corporation on behalf of
7 UBS. And when he did that, then shortly thereafter the account
8 was opened in the name of Kasler Management at UBS.

9 So his role was to act as really the accepting
10 official at UBS and then facilitate the account being opened.

11 Q. Okay. Thank you. Going on to Paragraph 26, it says,
12 "According to records maintained by UBS and produced pursuant
13 to the DPA, which affiant has reviewed in or about December of
14 2000 Christos Bagios, Goldstein and their co-conspirators
15 caused UBS to maintain in its records in an IRS form W-8BEN.
16 Do you see that?

17 A. I do.

18 Q. Okay. And what was it exactly that Mr. Bagios did in that
19 regard?

20 A. Mr. Bagios was -- is it Bagios for Bugios or Biaos?

21 THE DEFENDANT: Bagios.

22 THE WITNESS: Bagios. Okay. I apologize.

23 Mr. Bagios was Mr. Goldstein's' relationship manager.
24 He was the relationship manager on the account.

25 He accepted the W-8BEN in the name of Kasler

1 Management knowing that Bernard Goldstein was the true owner of
2 that account.

3 BY MR. MENCHEL:

4 Q. And what is your understanding as to why the account was
5 not or the fact that there was an assertion that the account
6 was not subject to U.S. taxation, why was that false?

7 A. Because the account was truly owned by U.S. tax payer
8 Bernard Goldstein and not the Bahamian corporation.

9 Q. Okay. And just so we are clear, your basis for Mr. Bagios
10 knowing that would be that there was an account --

11 A. Previous.

12 Q. -- previously?

13 A. Yes.

14 Q. All right.

15 A. Yes, and then he facilitated or was involved with the
16 transfer of money from Mr. Goldstein's' personal account to
17 Kasler Management at UBS.

18 Q. Paragraph 29 references Mr. Goldstein withdrawing
19 approximately \$15,000 in cash from the Kasler account. Do you
20 see that?

21 A. I do.

22 Q. Okay. Was Mr. Bagios involved in that in any way, to your
23 knowledge?

24 A. The files were unclear.

25 Q. What does that mean?

1 A. That means the UBS documents pursuant to this account that
2 were turned over that I reviewed were unclear as to whether or
3 not any UBS personnel were involved with this withdrawal.

4 THE COURT: Mr. Menchel, just so you know, the
5 microphone picks up whispering, which if you want to whisper,
6 just maybe turn off the microphone.

7 MR. MENCHEL: Just give me one moment, please, Your
8 Honor.

9 THE COURT: Sure.

10 MR. MENCHEL: I just want to review my notes.

11 THE COURT: All right.

12 MR. MENCHEL: How do I turn it off?

13 THE COURT: There is a little button at the base.

14 BY MR. MENCHEL:

15 Q. Okay. Under the paragraphs that are entitled "other
16 clients" beginning on page 10, do you see that?

17 A. I do.

18 Q. Okay. It says, "according to a sworn statement" -- I am in
19 Paragraph 31 now -- "provided to the IRS by C.L. a U.S. tax
20 payor known to the government maintained an undeclared account
21 at UBS in or about 1999 and again in or about 2000, Christos
22 Bagios met with C.L. in a hotel in San Francisco to discuss the
23 undeclared account."

24 A. I see that.

25 Q. And I think I had asked you earlier whether or not you had

1 any knowledge of what was actually discussed with respect to
2 it. I assuming he is a part of those 17 people?

3 A. They are. They are.

4 Q. Okay. So I just want to be clear. Did the tax payer
5 provide to you that there was overt references made to
6 Mr. Bagios that he was aware that the account at that time was
7 undeclared?

8 A. What the tax payer provided was a statement saying that the
9 account was undeclared. The tax payer then said that they had
10 meetings with Mr. Bagios to discuss the account.

11 Q. That's it?

12 A. Well, the inference is that him as the relationship manager
13 would know that the account was undeclared.

14 Q. That's the inference?

15 A. Yes.

16 Q. Okay. And am I right that is also going to be true for
17 Paragraph 32?

18 A. I believe that will be the case for Paragraphs 32 and 34.
19 I hesitate to say these were statements that were produced by
20 the public signed under penalties of perjury. Some were more
21 descriptive than others.

22 So I would have to specifically review these
23 individual voluntary disclosures to tell you exactly what was
24 said.

25 Q. All right. That's fair. I appreciate that. Let me just

1 look at my notes from what was just proffered because,
2 obviously, I haven't had a great deal of time to digest that.

3 Directing your attention back to the complaint in
4 Paragraph 33 --

5 A. Yes.

6 Q. -- it does not mention Mr. Goldstein at all, but rather
7 references an unindicted co-conspirator.

8 A. Yes.

9 Q. Does this have anything to do with Mr. Bagios?

10 A. Other than it was another UBS banker that was allegedly
11 part of the conspiracy.

12 Q. That's it?

13 A. That's the inference, yes.

14 Q. The same question as to 35. It does not mention
15 specifically Mr. Bagios by name. In fact, it talks about
16 Mr. Gadola.

17 Did Mr. Bagios have any direct involvement in this
18 particular relationship?

19 A. I do not believe so.

20 Q. In terms of the time frame relating to Mr. Bagios, what is
21 the latest event that you can point to that puts his
22 involvement into this conspiracy?

23 A. The UBS conspiracy?

24 Q. Yes. Just so we are clear, is there any other conspiracy
25 that you are alleging that Mr. Bagios is a member of?

1 A. I am not, no.

2 Q. Okay.

3 A. I was just clarifying your question.

4 Q. That's fine. I just wanted to make sure I understand.

5 A. Well, Mr. Goldstein, who is, again as we have discussed,
6 Mr. Bagios was his relationship manager, continued to utilize
7 the Panamanian corporation through his 2007 tax return which
8 was filed in 2008. That would be the most recent event.

9 Q. And based on the review of those records and files, when
10 was the last time you saw any involvement by Mr. Bagios in
11 relationship to that account?

12 A. I am not sure if it was the Goldstein account, but I have
13 seen statements by other tax payers which indicate 2005.

14 Q. 2005 would be the latest?

15 A. I believe so.

16 MR. MENCHEL: One second, please. Thank you, Your
17 Honor. I have no further questions.

18 THE COURT: All right. Is there any redirect?

19 MR. DALY: I have just a few questions, Your Honor.

20 THE COURT: All right.

21 REDIRECT EXAMINATION

22 BY MR. DALY:

23 Q. Special Agent Ficco, if I may approach? I am just going to
24 hand him the exhibit 1, Your Honor.

25 THE COURT: All right.

1 THE WITNESS: Thank you.

2 BY MR. DALY:

3 Q. If you would turn to page 4, paragraph 9.

4 A. Yes.

5 Q. In that paragraph which discusses the forms that you UBS
6 provided to its U.S. clients, in that paragraph does it state
7 that in 2000 roughly at the time that Mr. Goldstein formed his
8 sham entity, that UBS changed its form to saying, to changing
9 it to say, "I would like to avoid disclosure of my identity to
10 the U.S. Internal Revenue Service under new tax regulations to,
11 "I am aware of the new tax regulations?"

12 A. I see that in the statement, yes.

13 Q. And was Mr. Bagios part of a larger scheme involving many
14 bankers coming to the United States engaging in very similar
15 behavior?

16 A. Yes.

17 Q. Now, Mr. Menchel asked you if there is anything wrong about
18 coming to the United States to conduct banking.

19 At the time that Mr. Bagios worked for UBS, A.G., was
20 he registered with the SEC?

21 A. I don't believe so.

22 Q. Okay. And is registration a requirement in order to
23 conduct banking in the United States? Excuse me. To provide
24 investment advice?

25 A. To provide investment advice, yes, I believe so.

1 Q. And at that time was UBS, A.G. registered as a broker
2 dealer to provide investment advice?

3 A. I don't believe so, but I am not sure.

4 Q. Okay. All right. And Mr. Menchel noted in the statement
5 of facts that the only reference to Mr. Bagios there was the 45
6 to 60 bankers, and the inference was that Mr. Bagios was one of
7 those, correct?

8 A. Yes.

9 Q. Did Renzo Gadola identify Mr. Bagios as a fellow banker
10 with undeclared accounts?

11 A. Yes, he did.

12 Q. And did Mr. Gadola estimate that 80 percent of Mr. Bagios'
13 clients in the United States maintained undeclared accounts?

14 A. That is what Mr. Gadola said.

15 MR. DALY: One moment, Your Honor.

16 THE COURT: All right.

17 BY MR. DALY:

18 Q. Special Agent Ficco, when Mr. Bagios left UBS, A.G., where
19 did he go?

20 A. I believe he went to another company inside UBS called
21 Swiss Financial Advisors.

22 Q. And what was that?

23 A. That was an entity that serviced declared accounts.

24 Q. When you say "declared accounts," what do you mean by that?

25 A. Accounts that were declared to the United States

1 Government.

2 Q. According to Mr. Gadola, did Mr. Bagios take any of his
3 undeclared accounts to Swiss Financial Advisors?

4 A. I don't believe he did.

5 Q. And, in fact, at Swiss Financial Advisors was he allowed to
6 keep any of those undeclared accounts?

7 A. He was not. He would not have been.

8 MR. DALY: Nothing further, Your Honor.

9 THE COURT: All right. Mr. Menchel?

10 MR. GREENSPAN: Your Honor, could we just have a brief
11 cross on some new information that Mr. Ficco gave?

12 THE COURT: Yes.

13 RECROSS EXAMINATION

14 BY MR. GREENSPAN:

15 Q. Mr. Ficco, I believe Mr. Daly just asked you about the
16 travel to the United States and whether UBS was registered with
17 the SEC as a broker or investment advisor, correct?

18 A. He asked that, yes.

19 Q. And you stated that you believe UBS was not?

20 A. Well, he asked the question about UBS, A.G., and I said I
21 was unsure whether UBS, A.G. was.

22 Q. Okay. And you stated that you don't believe Mr. Bagios was
23 registered as a broker or an investment advisor, either?

24 A. I have seen nothing that indicates that Mr. Bagios was
25 registered in the time frame he was working for UBS, A.G.

1 Q. Okay. So was he engaged in a securities law violation in
2 your mind?

3 A. I am not an expert in security law.

4 Q. Was anything that he was doing with respect to the failure
5 to be registered have anything to do with the tax laws?

6 A. As far as I know, no. They are separate. They could be
7 separate violations, but as I said, I am not an expert on
8 securities law.

9 MR. GREENSPAN: Okay. Thank you. That's it.

10 THE COURT: All right. You may step down.

11 THE WITNESS: Should I leave these documents here,
12 Judge?

13 THE COURT: Yes. Thank you.

14 [The witness was excused].

15 THE COURT: All right. Does the defense have any
16 evidence that it wishes to present?

17 MR. MENCHEL: Not at this time. Thank you, Your
18 Honor.

19 THE COURT: All right. I will hear argument from the
20 government.

21 MR. DALY: Your Honor, addressing I assume solely the
22 preliminary hearing at this point or both the preliminary
23 hearing and the pretrial detention?

24 THE COURT: Why don't we do both. I think it will be
25 more expeditious.

1 MR. DALY: Okay. Certainly.

2 Your Honor, when Special Agent Ficco was first sworn
3 out, the government, by your own calculation, made a showing of
4 probable cause.

5 We have added additional information to bolster that
6 UBS' statement of facts clearly shows that it has admitted to
7 engaging in a long running scheme to defraud the United States
8 by sending its bankers who are not registered into the United
9 States to conduct secret banking with United States citizens
10 who maintain accounts that they did not declare to the IRS.

11 A central portion of that scheme was the use of these
12 sham entities in tax aid jurisdictions. Mr. Bagios was no
13 different from any of the other bankers who he is or is
14 basically included here as co-conspirators, in that he assisted
15 others in forming these sham entities and maintained and
16 managed accounts using those sham entities.

17 It was part of, as is stated in the statement of
18 facts, it was a company-wide effort to do this, starting in
19 2000, which is exactly the time that Mr. Goldstein himself
20 engaged in this or Mr. Bagios himself engaged in this conduct
21 with Mr. Goldstein.

22 It continued even when he left UBS, A.G. for the
23 registered part of Swiss Financial Advisors. The fraud
24 continued.

25 Mr. Bagios has Pinkerton liability. There is no legal

1 withdrawal. There is no indication that he came clean and made
2 a clean breast of things and told everything.

3 Instead, he handed off his clients to the next UBS
4 banker, and the next UBS banker continued it on until the U.S.
5 Government cracked down on it.

6 In, fact even though they brought it up themselves,
7 there are at least, alleged in the complaint, affirmative acts
8 up through May of 2005, which given the 6 year Statute of
9 Limitations for a client conspiracy, is still within the
10 statute.

11 As far as the detention portion, Your Honor, the
12 government considers Mr. Bagios to be a flight risk.

13 There is, you know, a four part test. The nature of
14 circumstances of the offense, the weight of the evidence, the
15 history and characteristics of the defendants and the nature
16 and seriousness and danger posed by their release.

17 The government has to meet this by a preponderance.
18 Looking at the nature and circumstances of the offense, we are
19 looking at a very broad ranging conspiracy.

20 It carries a maximum penalty of 5 years and twice the
21 loss. The loss here is enormous. UBS itself has admitted and
22 paid \$400,000,000.

23 It was a brazen fraud. These bankers actively sought
24 to conceal U.S. ownership. It was huge, involving 45 to 60
25 people.

1 Within the statement of facts you will see the
2 thousands of trips each year taken by UBS bankers to enter the
3 United States and conduct the secret banking.

4 According to Mr. Gadola, Mr. Bagios himself had a
5 large portion of these; you know, approximately 400,000,000.

6 In IRS taxpayers who have come forward, looking at it
7 at the high end would be about 89,000,000, the low end
8 38,000,000.

9 So as far as if Mr. Gadola is convicted, he faces a
10 substantial portion, if not the statutory maximum in prison.

11 If we look at the weight of the evidence, UBS itself
12 has admitted what it did and admitted what its bankers did.

13 Renzo Gadola, his former co-worker in this West Coast
14 team has admitted what he did. He is in Florida. He provided
15 this information.

16 This is unlike any other case we have probably seen
17 here involving offshore banking, where if someone who is
18 engaging in the exact same conduct, who has admitted it, who
19 has stated it for interviews and who will be there to testify,
20 it is unlike any other case where the entity that organized
21 this behavior has admitted it in the district and said that it
22 was a concerted attack to violate U.S. tax laws.

23 The weight of the evidence clearly favors the
24 government. The history and circumstances and characteristics
25 of the defendant, if we look at whether the defendant is a

1 flight risk, it is clear that there is no set of circumstances
2 that could guarantee his presence.

3 THE COURT: Well, nothing has to guarantee it. It
4 just has to reasonably insure.

5 MR. DALY: Reasonably insure. I have reached too far.
6 He has no ties to the United States. No friends. No family.
7 No money. No assets.

8 He doesn't work here. He has nothing here other than
9 this outstanding criminal charge.

10 Everything he owns is abroad. If he were to leave the
11 jurisdiction, and the Bahamas is only 80 miles away, there is a
12 Credit Suisse office there. There is no guarantee. In fact,
13 there is little likelihood whatsoever that he would ever be
14 compelled to return to the United States.

15 Greece will not extradite him. While Mr. Menchel made
16 great effect of the fact that it is at the discretion of
17 Switzerland to extradite individuals, I can think, and I don't
18 know if Mr. Menchel can think of any tax offender who has ever
19 been extradited from Switzerland to the United States.

20 I mean, it is a canard to think that they actually
21 would extradite a tax offender. And if one looks at the
22 lengths that the United States had to go to to bring UBS to
23 justice, it is highly doubtful that they would ever, ever agree
24 to send him back.

25 It is also the case law that the prospect of civil

1 enforcement and government enforcement in a volatile business
2 situation are grounds to detain. That's in United States
3 versus Levine, 77 F.Supp 460 out of the Northern District of
4 Indiana in 1991.

5 Clearly, considering his past activity, if Mr. Bagios
6 is convicted, or even if he is not convicted based upon the
7 voluntarily disclosures that have been disclosed here, he will
8 face or he will likely face enforcement proceedings brought by
9 the Securities & Exchange Commission, if not FINRA which would
10 be further reason to leave. Extensive prison time.

11 THE COURT: I am sorry. What is the basis of your
12 saying that he may face -- I mean, there is no evidence that
13 was offered to that effect, was there?

14 MR. DALY: There is no evidence of that, but since
15 each of these --

16 THE COURT: Well, how can I accept that then?

17 MR. DALY: Well, I guess it would be an inference that
18 he would face it, given that 17 taxpayers have come and said
19 that Mr. Bagios was here unregistered helping them commit tax
20 evasion. The inference is --

21 THE COURT: Have you spoken to someone at the SEC?

22 MR. DALY: I have not, Your Honor.

23 THE COURT: All right. I am not going to accept that
24 part of the proffer.

25 MR. DALY: Okay. Certainly, Your Honor.

1 As far as the prospect of electronic monitoring, it is
2 no guarantee that an individual will stay here.

3 I think in the Cohen case which we recently tried
4 here, Judge Snow commented that all that is going to do is let
5 you know a little bit earlier that they have left the
6 jurisdiction, and I think that's where we stand as far as
7 detention goes, Your Honor.

8 THE COURT: All right. Thank you. Defense?

9 MR. MENCHEL: Thank you, Your Honor.

10 I think it is important to start with the proposition
11 that the Bail Reform Act favors pretrial release. We start
12 from that premise, and that detention is really limited to a
13 group of offenders who the court finds, you know, would likely
14 flee.

15 If you look rather all of the factors that counsel
16 just went through, I think actually all of them favor
17 Mr. Bagios being released, with obviously a reasonable bond,
18 and I know of a number of cases that I can proffer to the
19 court, including one that I am involved in out of D.C.
20 involving FCPA violations, frankly, holding much more serious
21 penalties than what Mr. Bagios is facing, which as counsel has
22 correctly pointed out, has a 5 year cap, where all of the
23 foreign nationals, and I have the orders, and I am happy to
24 hand them up, were actually allowed to go home to their
25 countries after posting a sizable bond, agreeing to pretrial,

1 you know, obviously to pretrial monitoring and the like;
2 surrendering of their passports and waiving extraditions.

3 This man has an unblemished record. Prior to this
4 case there has been no evidence that he has been involved in
5 anything criminal whatsoever.

6 And, again, in terms of the nature and circumstances
7 of the offense, while I am not pooh-poohing it as not being
8 serious, it is not a 20 year drug case, and he is just as
9 incentivised to not flee and face these charges for precisely
10 the same reason and even more so than what counsel suggested.

11 He holds several U.S. licenses. He holds a Series 7,
12 I believe, and a Series 66, and we got a letter from counsel
13 suggesting, and I would like to hand it up to the court, from
14 Swiss counsel. I have a copy for you. May I approach?

15 THE COURT: You may.

16 MR. MENCHEL: Thank you.

17 THE COURT: Thank you.

18 MR. MENCHEL: I believe the letter speaks for itself,
19 Your Honor, so I am not going to obviously read the entire
20 thing, but this was a letter by a Swiss lawyer that we employed
21 in connection with this particular issue, and it lays out what
22 the likely result would be of Mr. Bagios' career should he flee
23 the jurisdiction of the United States and fail to come back and
24 face these charges.

25 It is likely, and we also have a letter, by the way,

1 from Credit Suisse which I would like to hand up.

2 THE COURT: Thank you.

3 MR. MENCHEL: It is likely that were he not to comply
4 with U.S. law, he would lose his job at Credit Suisse.

5 It is likely were he not to comply with U.S. law, he
6 would lose basically his broker's license and his investment
7 advisor licenses, and so he is just as incentivised not to flee
8 and to face these charges appropriately so that he can maintain
9 his career.

10 It is also important to understand that the government
11 has repeatedly says he had no U.S. ties and no U.S. business
12 relationships to the United States. That's patently untrue.

13 By the government's own proof, most of his clientele
14 is U.S. based.

15 Okay. If he were to flee this jurisdiction and lose
16 these licenses, it would be very unlikely that he would ever be
17 employable again.

18 Also, contrary to what counsel says --

19 THE COURT: Well, in the United States, right?

20 MR. MENCHEL: In the United States, and he likely
21 would lose his job at Credit Suisse. So that is what those two
22 letters basically tell you.

23 One is from Credit Suisse, basically telling you that
24 they expect their employees to follow the law of the United
25 States, and that they obviously have the discretion to

1 terminate him if he should not do so. Do you want to amplify
2 on that?

3 MR. GREENSPAN: I would just add that the letter from
4 the Swiss lawyer also explains that there would be employment
5 consequences within Switzerland beyond just termination by
6 Credit Suisse; that under the standard of reasonable behavior,
7 he would basically be unemployable.

8 There is a Swiss financial supervisory authority that
9 he cites called FINMA that would likely take action, or
10 certainly he would really be jeopardizing his financial future
11 were he to violate the law and flee.

12 MR. MENCHEL: And the other distinction that I think
13 it is important noting, which was glossed over by the
14 government, is that because Mr. Bagios is not a Swiss citizen,
15 a different standard would apply to him with respect to
16 extradition.

17 In the last page of this opinion letter that we
18 provided to you, it is discussed in detail that, in fact, he
19 may face extradition to the United States in the case of a bail
20 violation, or even due to the underlying tax fraud charges.

21 So I don't think it is necessarily the case that just
22 because no one to date that we know of, and in the Mark Rich
23 example, which was quite a while ago, means that if we executed
24 an extradition waiver in this case, the Swiss Government would
25 not extradite him. I think that that's a reach, and I don't

1 think the court can make that conclusion.

2 Really, what this case comes down to, Your Honor, is
3 that they are simply saying that because he is not a U.S.
4 citizen and because he is, in fact, a Swiss resident, that he
5 automatically is a flight risk.

6 There have been a number of courts that have held that
7 under that analysis that any non-U.S. citizen with no ties
8 would automatically be detained.

9 If Congress had intended that to be the result, they
10 could have written that into the statute like they have with
11 other types of crimes.

12 They could have made it at least a rebuttal
13 presumption, like they have with certain types of offenses,
14 such as drug offenses, but Congress has not done that, and I
15 don't think this court should come to the hasty conclusion that
16 just because the man resides in Switzerland means he is
17 automatically a risk of flight.

18 He has the opportunity to flee. I agree with that,
19 and citing the Supreme Court case of, and I am going to butcher
20 this, but I am going to do my best, Trun Dean Hung versus
21 United States of United States at 439 U.S. 1329, a 1978 Supreme
22 Court decision authored by Justice Brennan.

23 The Court made note of the fact this was a person who
24 was a permanent resident -- I am sorry -- who was a resident of
25 Vietnam; that just because he has the means to procure, the

1 government does not necessarily have the means to procure his
2 return doesn't suggest that just because he has the
3 opportunities for flight, they hardly establish any inclination
4 on the part of the applicant to flee.

5 Okay. And that's the point I am trying to make. You
6 cannot just make the leap inferentially that because he is a
7 Swiss national that he automatically ought to be detained, and
8 I can hand up to the court if you would like those FCPA cases
9 where citizens from all over the world --

10 THE COURT: I mean, that's not going to have any
11 bearing. You know, we look at each case on its own merits.

12 MR. MENCHEL: Well, I think that's the point, and when
13 you compare Mr. Bagios to those other cases --

14 THE COURT: Well, let me ask you something:
15 What would you suggest in order to reasonably insure
16 his appearance as required?

17 MR. MENCHEL: Okay. We have present in court his
18 father-in-law. We are suggesting a \$1,000,000 bond which would
19 be backed by his father-in-law who has come and provided
20 \$300,000 U.S.

21 THE COURT: A \$1,000,000 cash bond?

22 MR. MENCHEL: No. It would be a \$1,000,000 personal
23 surety bond backed by \$300,000 cash collateral, okay, and then
24 there is also another friend.

25 THE COURT: What about a corporate surety bond?

1 MR. MENCHEL: We are open to that, Your Honor.
2 Whichever way in which the court wants to structure the bond is
3 not really as concerning to us.

4 The point is we have about \$345,000 in cash that we
5 can offer to the court. 300 comes from his father-in-law who
6 has flown in from Switzerland and is here in the courtroom
7 today standing in the back with two other friends of Mr. Bagios
8 who have also flown in, one who has made a pledge of an
9 additional \$45,000 in U.S., all three of which are willing to
10 co-sign on the bond in support of Mr. Bagios.

11 We also have letters of recommendation from family
12 members in friends we would like to hand up to the court
13 attesting to the man's good character, and we would suggest
14 that he surrender his passport in Switzerland; that he execute
15 extradition waivers.

16 THE COURT: I am sorry. Surrender his passport. It
17 is in Switzerland now?

18 MR. MENCHEL: No, no. I am saying that it will be
19 returned to him. He will be allowed to go home. He can
20 surrender it in Switzerland, which is what has been done in
21 other cases.

22 Okay. Execute extradition waivers in both Greece and
23 Switzerland and require constant monitoring by Pretrial
24 Services.

25 THE COURT: Let me ask you something: If he executes

1 extradition waivers in Greece and Switzerland, will those just
2 be meaningless pieces of paper?

3 I mean, I am hearing that Greece does not extradite
4 its citizens. So what is the value of an extradition waiver
5 from Greece?

6 MR. MENCHEL: I have to tell you other than proffering
7 that, I don't know that to be the case, but the reality is the
8 man does not live in Greece. He lives and his family
9 lives with his two children

10 THE COURT: But he could go back and live in Greece if
11 he wished to do so. I mean, he has extended family there,
12 right?

13 So to the extent that an extradition waiver from
14 Greece is a meaningless piece of paper, I am not sure that that
15 is really helpful to me, but maybe it is not. I don't know.
16 That's why I am asking you what is your view on this?

17 MR. MENCHEL: I am not going to tell the Court I have
18 looked into that specific issue with respect to Greece. I have
19 not.

20 The lives and resides and has lived, how many years
21 have you lived there? Yes, 20 years in Switzerland, but if
22 that is determinative to the court, I am happy to do the
23 research.

24 I don't want to take the government at face value on
25 that because I think they are wrong with respect to Switzerland

1 when it comes to the issue of extradition, and that we did
2 provide you with an opinion on.

3 THE COURT: All right. Go ahead.

4 MR. MENCHEL: So that would be our position with
5 respect to this case. Mr. Bagios intends to see this case
6 through.

7 THE COURT: Let me ask you a question: Is there a
8 possibility that he would be willing to stay here on electronic
9 monitoring?

10 MR. MENCHEL: Obviously our first request would be
11 that he be allowed to return home to his wife and two children.

12 If the Court is not willing to do that, I think I even
13 made mention of it the other day, we would be open to that
14 idea, and we have already started to look at and made
15 arrangements for housing in the United States if that's what
16 the Court desires.

17 THE COURT: All right. Thank you.

18 MR. MENCHEL: Thank you.

19 THE COURT: Mr. Daly, anything further?

20 MR. DALY: Well, Your Honor, I think while they have
21 presented this letter about Swiss extradition, it is filled
22 with conditional language that does not I believe support the
23 assertion that they make that he could be extradited.

24 I think Your Honor correctly stated that if he were to
25 flee to Switzerland, all he needs to do is take a plane to

1 Greece where there is no guarantee of him ever returning.

2 As far as a cash bond of \$345,000, that the people
3 would sign up to a million, they have all flown in here from
4 foreign jurisdictions.

5 I can't imagine it would be easy to collect on a
6 \$1,000,000 bond on Swiss nationals through the U.S. courts.

7 THE COURT: Let me tell you what my concern is. I do
8 have a concern about Mr. Bagios not returning and not being
9 extraditable.

10 On the other hand, if the only reason I have to hold
11 him here is because he doesn't have ties to this country and he
12 is a foreign national, I am not sure that that is really
13 enough.

14 I mean, I guess I could do it, but I don't feel
15 comfortable doing it. So I need you to tell me --

16 MR. DALY: Well, he has great incentive to flee, Your
17 Honor. The man is facing 5 years imprisonment and a massive
18 fine.

19 It is not just simply that he is a foreign national is
20 a reason to flee. It is that he faces, quite frankly, the end
21 of his career as a banker and long term imprisonment here in
22 the United States.

23 THE COURT: Although if we take the defenses' position
24 at face value and the letter from Credit Suisse, they would
25 argue that if he fled he would face the end of his career as a

1 result of fleeing.

2 MR. DALY: At Credit Suisse.

3 THE COURT: That's true.

4 MR. DALY: There are many other Swiss banks and many
5 other clients outside of the United States who he could easily
6 service at another institution out of Switzerland or Greece.

7 While he may lose his instant employer, he does hold a
8 fairly senior position at Credit Suisse.

9 One could draw the inference that other banking
10 institutions who might not have the same standards of Credit
11 Suisse would love to snap up someone like that.

12 MR. GREENSPAN: Your Honor, if I may?

13 THE COURT: Yes.

14 MR. GREENSPAN: I think, as I said before, that the
15 letter from our Swiss counsel indicates that he would have
16 very, very limited employment opportunities in Switzerland
17 generally.

18 So I think it is wild speculation that some other
19 nefarious Swiss bank would love to snap him up.

20 THE COURT: And I hear what you are saying, but I mean
21 I am also somewhat reluctant to take as the letter of the law
22 an opinion by counsel for, I guess it is counsel. Is it
23 counsel for UBS? I don't know who this is.

24 MR. DALY: This is counsel for his father-in-law. The
25 first line says, "The father-in-law of the detained

1 Mr. Christos Bagios."

2 THE COURT: All right. So I mean I am a little bit
3 reluctant, you know, look at the source here.

4 So I am a little bit reluctant to take that as what
5 the actual law is. It may well be. I just don't know. You
6 know, although there is a procedure for determining what
7 foreign law is, and it involves the court determining what it
8 wishes to rely upon in that respect, I mean obviously I would
9 be reluctant to rely solely upon a statement of the law from
10 Mr. Bagios' own father-in-law's attorneys.

11 Having said that, as I indicated previously, I am not
12 entirely comfortable with the idea of detaining him solely
13 because he lacks ties. I think I could do it.

14 I think that the statute allows me to do it, but I am
15 wondering if there is some kind of bond that would be
16 appropriate.

17 I would require him to stay in the United States. I
18 can tell you that right now.

19 MR. MENCHEL: Okay. Well, we have put together right
20 now, you know, \$345,000. These are not people of tremendous
21 means.

22 If you look at his assets, we are not talking about
23 somebody that has the wherewithal to do anything he wants.

24 There is another friend in the courtroom that is also
25 trying to procure funds. We may be able to up the ante a bit,

1 but it is not going to be in the millions of dollars. I can
2 tell you that right now.

3 We just don't have those funds available to us, but
4 these are people that obviously are standing behind Mr. Bagios
5 who have flown here and are willing to put their money up,
6 okay, as real collateral at real risk should he not return for
7 this court hearing.

8 There is another case that I would like to bring the
9 Court's attention to very similar called U.S. versus Bogner.
10 The West Law cite is 2004 West Law 169790, and the court made
11 the very point that I think this court is making.

12 THE COURT: I don't want to punish him being for being
13 a foreign national is basically what I am saying.

14 MR. MENCHEL: And that is what this court said, that
15 should not be the only basis to detain somebody.

16 There ought to be more, and I really think, Judge,
17 with all due respect, we saw a little bit of it yesterday, that
18 what is really going on here a little bit is a little bit of
19 using the bond, the detention hearing as a way to squeeze
20 Mr. Bagios maybe into doing so something that he is not
21 prepared to do.

22 THE COURT: I think there is good faith. I think
23 there is a good faith basis for seeking detention.

24 In no way do I mean to suggest that there isn't. I
25 mean, the fact that Mr. Bagios has no ties whatsoever in the

1 way of family, friends, et cetera, to this country I think in
2 itself certainly lays a good faith basis for the government to
3 proceed in that regard, and I don't think this is an easy
4 decision either way, in view of the questions regarding
5 extradition.

6 Having said that, however, I am just concerned about
7 detaining him pretty much solely because of his status as a
8 foreign national without ties to the country.

9 So let me ask you, Mr. Daly, what are your suggestions
10 if I were going to go in the direction of a bond?

11 MR. DALY: Well, Your Honor, first of all, the
12 \$345,000, while substantial, pales in comparison to what he is
13 ultimately, if the government is correct and prevails, what he
14 is ultimately liable for, and so we don't think that is, first
15 of all, is a sufficient bond to guarantee his presence,
16 particularly given the fact that it would be guaranteed by
17 individuals who are again outside of the United States with no
18 ties to the United States.

19 THE COURT: I am thinking corporate surety bond. That
20 is what I am thinking, and maybe some other kind of bond as
21 well, with electronic monitoring and a residence set up here.

22 MR. DALY: I was going to say, Your Honor, if you were
23 to going to release him, we certainly should have arrangements
24 for him to be housed prior to any release and being monitored.

25 THE COURT: I agree.

1 MR. DALY: I agree, Your Honor.

2 MR. MENCHEL: We have done that.

3 THE COURT: All right.

4 MR. MENCHEL: I don't know if the court cared. My
5 office is in downtown Miami. I would prefer that Mr. Bagios be
6 in that part of the district for my convenience.

7 THE COURT: As long as he is in the district, I don't
8 think it matters where in the district he is.

9 MR. MENCHEL: We have arranged for that, Your Honor.
10 We have a corporate housing apartment already lined up and, you
11 know, I don't know how long that lease will last for, but then
12 we will obviously always make sure he has appropriate housing,
13 with the Court's permission and also obviously with pretrial
14 being made aware of it.

15 THE COURT: Mr. Daly?

16 MR. DALY: If the court is entertaining the bond, then
17 certainly the corporate housing along with the conditions that
18 the court finds acceptable would be acceptable to us, but we do
19 believe that if the court is going to entertain a bond, which
20 we urge the court not to, that they set a higher amount and a
21 corporate surety.

22 THE COURT: All right. Just a moment. All right.

23 I think, once again, it is a close call, but I am
24 going to deny the motion for pretrial detention.

25 I am going to impose a \$500,000 corporate surety bond,

1 a \$150,000 cash bond which is to be deposited in the registry
2 of the court and returned upon Mr. Bagios' successful
3 completion of his bond period.

4 I am going to require electronic monitoring to be paid
5 for by the defendant, and Mr. Bagios must reside in the
6 Southern District of Florida.

7 All right. So that let me ask the government in
8 addition to the standard conditions which I will read in a
9 moment, are there any other conditions that the government is
10 requesting?

11 I understand that you object to my release of him, but
12 in view of the fact that I am going in this direction, is there
13 anything further that you request?

14 MR. DALY: I don't think there are any other
15 additional conditions of release.

16 THE COURT: All right. Mr. Bagios, in addition to the
17 bond that I have just set, I am going to require you to comply
18 with each and everyone of the following conditions. Please
19 listen carefully.

20 First, you must appear before the court and such other
21 places as you may be required to appear at the times and places
22 that you are required to appear.

23 Your travel is restricted to the Southern District of
24 Florida. That extends from Key West in the south to Vero Beach
25 in the north.

1 If you need to leave this area for any reason, you
2 must speak with your attorney who can file a motion with the
3 court. Only if the court grants the motion may you leave the
4 area.

5 You may not change your address without prior
6 permission in writing from the court. You shall commit no act
7 in violation of local, state or federal law.

8 You shall surrender all passports or travel documents
9 to the Pretrial Services Office.

10 Let me ask you what passports and travel documents you
11 have?

12 THE DEFENDANT: Only a Greek passport.

13 THE COURT: All right. You shall surrender that to
14 the Pretrial Services Office and shall not come into possession
15 of any additional passports or travel documents while you are
16 out on bond.

17 You shall report to the Pretrial Services Office with
18 the frequency that they require and avoid all contact with
19 victims or witnesses to the alleged offense, except through
20 your attorney and in preparation of your defense.

21 You may not possess any firearms, destructive devices
22 or other dangerous weapons. And if you have any of these
23 items, you must arrange immediately upon your release for the
24 transfer of them to the lawful custody of another individual.

25 You shall refrain from the consumption of illegal

1 narcotics or excessive alcohol and only if deemed required or
2 appropriate by Pretrial Services, then you shall submit to
3 random urine analysis.

4 Have I missed any conditions, Mr. Daly?

5 MR. DALY: No, Your Honor.

6 THE COURT: Did you understand each and everyone of
7 these conditions as have I just explained them to you,
8 Mr. Bagios?

9 MR. MENCHEL: I did, Your Honor.

10 THE COURT: All right. I need to let you know that
11 for any failure to comply with any one of these conditions or
12 for many failure to appear, a warrant could be issued for your
13 immediate arrest.

14 The government could come after you for the full
15 amount or could keep the \$150,000. The bondsman could come
16 after you for the rest of the \$500,000 and an additional
17 charges could be filed against you with additional jail time.

18 There is actually one other condition. I will require
19 the signing of the extradition waivers for Greece and for
20 Switzerland for whatever value they may have.

21 After all of these conditions are satisfied, and only
22 after they are all satisfied Mr. Bagios should be released.

23 Is there anything further we need to address here with
24 respect to Mr. Bagios' case?

25 MR. DALY: Just, Your Honor, on the record do you need

1 to announce a finding that the government has made probable
2 cause?

3 THE COURT: Yes. Thank you. I do make a finding of
4 probable cause in this case. Is there anything further?

5 MR. MENCHEL: No, Your Honor. Thank you.

6 THE COURT: All right. Thank you, gentlemen.

7 MR. DALY: Thank you, Your Honor.

8 (Whereupon the proceedings were concluded)
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C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of proceedings in the above-entitled matter.

MARCH 4, 2011

S/JERALD M. MEYERS

DATE

JERALD M. MEYERS, RPR.